IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 21184 of 1994

Between:

N.A. Munuswamy, S/o. N.Abbayee,
Operation Division, APSEB, R/o. 414-9, Oticheruru
Gremspet, Chittoor.

..... PETITIONER

AND

The Superintending Engineer Operation, APSEB,
Titupathi.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, order or directions one more particularly in the nature of Mandumus declaring the proceeding of the respondent in LR.No. SC/10/TPT/PRS/S2./F.BOC/D.No.20/90, dated 09.01.1990 of the Superintendent Engineer Operation, Tirupati as illegal, unconstitutional and violative of Ariticle 21 of the Constitution of India and consequentially direct the respondents to pay the pensionery benefits for petitioner's service giving credence for the entire period of service by treating the same as qualifying service for pensionery benefits.

Counsel for the Petitioner: SMT.V.PADMA

Counsel for the Respondent: MR.SAMINENI KISHORE, S.C. FOR APSEB

The Court made the following :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.21184 OF 1994

ORDER:

The order of the respondent dated 09.01.1990, whereby the petitioner's request for grant of pension was rejected on the ground that he had rendered qualifying service of only nine years nine months and twenty eight days as Watchman falling short of the requirement of ten years to become eligible for computation of pension, is challenged in this Writ Petition.

In the impugned order dated 09.01.1990 reference is made to the provisions of the A.P. (Revised) Pension Rules 1980 under which a minimum qualifying service is prescribed for entitlement of pension.

The case of the petitioner, in brief, is that he worked as a work-charged employee with the A.P. State Electricity Board from 25.12.1958 to 31.03.1963 and for want of vacancies his services were terminated, that he worked thereafter in the Social Welfare Department of the Government of A.P. from 1963 to 1976 and was again discharged from service for want of vacancy, that he was again re-appointed as Watchman in the APSEB, Chittoor in the O&M construction Division under the control of the Superintending Engineer, Operations, Tirupathi from 01.09.1978 to 22.06.1988 and that he retired from service on 22.06.1988 due to heart problems on medical grounds. The petitioner contends that he is a physically handicapped person having handicap in his right leg, which is infected by polio, having disability of 60%. It is his case that the break in service was for no fault of his and that apart from the nine years nine months and twenty-eight days continues service from

01.09.1978 to 22.06.1988, he had also worked earlier as a work charged employee for a period of four years and six days from 25.12.1958 to 31.03.1963 with the respondent Electricity Board. The petitioner submitted a representation on 09.10.1989 requesting for condonation of the short fall of ten years of continues service and his representation was rejected by the impugned order dated 09.01.1990 by the Superintending Engineer, Operations, Tirupathi. It is the petitioner's case that under Rule 45 of the A.P. (Revised) Pension Rules, he is eligible for pensionary benefits as the alleged short period of two months and two days is required to be treated as a completed half-year period. It is his case that if the earlier service rendered by him for the period from 1958 to 1963 is taken into consideration he would have put in service of much more than ten years and would thereby be eligible for pensionary benefits.

No counter affidavit is filed on behalf of the respondents.

However, learned Standing Counsel places before me a letter addressed by the respondent to the earlier Standing Counsel on 29.12.1994, wherein reference is made to para-63 of A.P. Pension Code Manual which is reproduced in the said letter, and reads thus:-

"Deficiency in service of a pensioner who is entitled to pension may be condoned in the case of persons governed by the old Pension Rules of Hyderabad Civil Services Rules or the provisions relating to Pension in the Civil Service Regulations as, in such cases, service of 25 years fetches a pension as if it is service of 30 years. Similarly, where a person who retires with qualifying service of nine years or more but less than ten years would be eligible for pension but for the deficiency in qualifying service. In these cases the deficiency may be condoned but only after considering the merits of each case i.e., the record of the Government servants would be clear. The competent authority to condone the deficiency up to 90 days will be pension sanctioning authority and that of more than 90 days and upto one year Government. These orders do not apply to interruptions between military and civil service."

(G.O.Ms.No.120 Fin. (Pen.I) Dept., dated 29.03.1971)

It is further stated in the said letter that the matter was under correspondence with the Board to obtain confirmation of the fact whether the petitioner is eligible for pension.

From the facts as narrated in the affidavit, it is clear that the petitioner is a physically handicapped person and it was only on account of his heart ailment that he had to retire from service on medical grounds, but for which he would have completed the minimum qualifying service of ten years. Rule-45 of the A.P. (Revised) Pension Rules, 1980 relates to amount of pension and under Rule 45(2) in case of Government servants, retiring in accordance with the provisions of the said rules after completing qualifying service of not less than ten years, the amount of pension shall be the appropriate amount as per the chart set out thereunder. Rule 45(3)(i) provides that in calculating the length of service, fractions of a year equal to six months and above shall be treated as completed six monthly period and under Rule 45(3)(ii), in the case of a Government servant retiring after the 10th September 1983, in calculating the length of service, a fraction of a year equal to three months or more shall be treated as a completed one half year.

Rule 54 relates to the power of relaxation and thereunder the Government, if it is satisfied that the operation of these rules causes undue hardship in any particular case may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary, for dealing with the case in a just and equitable manner.

Since the impugned order of the Superintendent Engineer dated 09.01.1990 refers to the A.P. (Revised) Pension Rules, 1980 and in the absence of a counter affidavit being filed by the respondent, it has necessarily to be presumed that the A.P. (Revised) Pension Rules, 1980 has also been made applicable to employees of the A.P. State Electricity Board. Since the petitioner, even if his service from 01.09.1978 to 22.06.1988 is alone taken into consideration, had worked for a period of nine years nine months and twenty eight days, the short fall would be for a period of merely two months and two days. The period exceeding nine years six months under Rule 45(3)(i) is possible of being construed as a period of six months in which event the petitioner would have completed the required qualification of ten years of service. Both Rule 54 of the A.P. (Revised) Pension Rules, 1980 and para-63 of the A.P. Pension Code, extracted supra, confer power to condone the deficiency, in the minimum qualifying service, on considering the merits of each case. If the facts, as stated in the affidavit, are taken as true, it would certainly be a matter worthy of consideration for condonation of the deficiency of two months and two days in the

minimum qualifying service prescribed as eligibility for pension.

The respondent/the competent authority concerned is hereby directed to consider the case of the petitioner, in accordance with Rule 54 of the A.P. (Revised) Pension Rules and para 63 of the A.P.Pension Code, for condonation of deficiency in the minimum qualifying service and pass appropriate orders thereon within three months from the date of receipt of a copy of this order.

Needless to state that if the competent authority decides to condone the deficiency and treats the service rendered by the petitioner as being eligible for pension, the petitioner shall be paid, the pensionary benefits, including arrears thereof, within a period of three months thereafter and shall also be continued to be paid pension thereafter in accordance with his eligibility.

The Writ petition is accordingly disposed of. No order as to costs.

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08 .07.2005.

MRKR

To

1. The Superintending Engineer Operation, APSEB,
   Tirupathi.

2. Two C.D.copies.